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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.2.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.Nos.55 and 224 of 2000

The Commissioner of Income Tax
Tamil Nadu-III, Chennai. .. Applicant in both

Vs

M/s.Pondy Granites
25, Londons Road
Chennai-10. .. Respondent in both

PRAYER: Tax case references against the order of the Income Tax Appellate Tribunal, Madras Bench 'A', Chennai dated 28.10.1997 in I.T.A.Nos.2476 and 2477/Mds/1990 for the assessment years 1987-88 and 1988-89. against the order of the Commissioner of Income Tax (Appeals) VI, Madras 34, dated 30.4.1990 in ITA No.97/89-90/City Cir VII for the Assessment year 1987-88 against the Income Tax Officer City Ward VII (3) dated 31.3.1989 G.I.No.73315-P/87-88 for the Assessment year 1987-88.

For Applicant : Mrs.Pushya Sitaraman
Sr.Standing Counsel
For Respondent : No appearance

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

At the instance of the Revenue, the Appellate Tribunal has stated the case and referred to us the following question of law:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee engaged in export of granite is eligible for deduction under Section 80HHC for the assessment years 1987-88 and 1988-89?"

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2. When the matter came on 31.1.2006, this Court passed the following order:

> "Since the private notice is returned with an endorsement 'left', the appellant is permitted to take substitute service by publication in an English daily having Chennai Edition mentioning the date of hearing as 15.2.2006. Post the matter on 15.2.2006."

3. In spite of paper publication in the Indian Express on 10.2.2006, there was no representation on behalf of the respondent on 15.2.2006 and hence, we directed the Registry to print the name of the respondent and post these cases next week.

4. Even today, there is no representation on behalf of the respondent. Hence, we are constrained to pass the following order after hearing the learned senior standing counsel for the Revenue as well as going through the records.

5.1. The facts of the case, in brief, are as hereunder:

The assessee is engaged in quarrying and export of granites. For the assessment years under consideration the assessee had claimed deduction under Section 80HHC of the Income-tax Act, 1961 (for brevity, "the Act") which was denied by the Assessing Officer.

5.2. On appeal, the Commissioner of Income Tax (Appeals) following the decision of the Appellate Tribunal in I.T.A.No.1040 and 1041/Mds/86, dated 19.5.1988, wherein it was held that the extraction of granites from the earth by blasting and export of granite stone after cutting off the rough edges amounted to manufacturing or production of an article or thing and deduction under Section 80J and 80HHC of the Act were available, provided other conditions for the allowance of these deductions were fulfilled, directed the Assessing Officer to allow the admissible deduction u/s.80HHC of the Act accordingly.

5.3. On appeal by the Revenue, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals).

6. The learned Senior Standing Counsel for the Revenue submits that the question of law raised in this appeal is covered in favour of the Revenue by the decisions in:

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(i) Commissioner of Income-tax Vs. Pooshya Exports P. Ltd., [2003] 262 ITR 417; and
(ii) Gem Granites Vs. Commissioner of Income-tax [2004] 271 ITR 322.

7. At this juncture, it is apt to refer Section 80HHC as it then stood as follows :

"Section-80HHC: Deduction in respect of profits retained for export business.—

(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the profits derived by the assessee from the export of such goods or merchandise.

(2) (a) This section applies to all goods or merchandise, other than those specified in clause (b), if the sale proceeds of such goods or merchandise exported out of India are receivable by the assessee in convertible foreign exchange.

(b) This section does not apply to the following goods or merchandise, namely :—

(i) mineral oil ; and

(ii) minerals and ores."

8. By the Amendment Act 2 of 1991 an amendment to section 80HHC of the Income Tax Act was brought in. The amended Section in so far as it is relevant reads thus:

"(b) This section does not apply to the following goods or merchandise, namely :—

(i) mineral oil ; and

(ii) minerals and ores (other than processed minerals and ores specified in the Twelfth Schedule) . . ."

9. In the Twelfth Schedule, Item No. (x) specifies "cut and polished minerals and rocks including cut and polished granite".

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10. The word "mineral" as used in sub-section (2)(b) to section 80HHC is to be widely construed as has been decided by the Apex Court in Stonecraft Enterprises v. CIT, [1999] 237 ITR 131 wherein it was held :

> "The word 'minerals' in sub-section (2)(b) of section 80HHC must be read in the context of 'mineral oil' and 'ores' with which it is associated. It seems to us that these words taken together are intended to encompass all that may be extracted from the earth. All minerals extracted from the earth, granite included must, therefore, be held to be covered by the provisions of sub-section (2)(b) of section 80HHC, and the exporter thereof, is therefore, disentitled to the benefit of that section."

11. This Court in Commissioner of Income-tax Vs. Pooshya Exports P. Ltd., [2003] 262 ITR 417, after referring the relevant provision of the statute, i.e., Section 80HHC of the Income-tax Act, held that, by virtue of the expression "the export of any goods or merchandise to which this section applies" employed in Section 80HHC and by virtue of sub-section 2(b)(ii), which specifically denied the benefit of the section to export of granite (mineral), the benefit under section 80HHC is not available to the assessee; that by the Amendment Act 2 of 1991, an exception has been carved out to the specific provision which excluded, rather denied the benefit conferred under section 80HHC to export of minerals (granite); that the amendment brought by the Finance (No. 2) Act of 1991 to Section 80HHC is only prospective and effective from April 1, 1991; and that the statutory provision is very clear in the sense that section 80HHC is not applicable to the export of granite.

12. That apart, the Apex Court in Gem Granites Vs. Commissioner of Income-tax [2004] 271 ITR 322, held that :

> "There are no words of restriction which qualify the word "minerals" and it would be reasonable to assume that in the absence of any such limitation, the word must be read to include all kinds of minerals in all its forms, i.e., whether subjected to any process or not as long as it continued to retain the characteristics of the mineral. To hold that the word "minerals" never included processed minerals would require our reading words of limitation into an otherwise clear and unambiguous statutory provision. There is no dispute that granite is covered by the word "minerals" in the exclusionary clause (b) of sub-section (2) of section 80HHC. It would follow that for the unamended section 80HHC(2)(b) cut and polished granite would also be a mineral.

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> The introduction of the phrase "other than" in clause (b) of sub-section (2) of section 80HHC in 1991 in our opinion,indicates the carving out of a specific class from the generic class of "minerals and ores". This means, that were it not for the exception, the specified processed minerals and ores would have been covered by the words "minerals and ores". It also indicates that only the minerals and ores subjected to the process of cutting and polishing would be entitled to the benefit of section 80HHC meaning thereby that all other species of processed minerals and ores would continue to be covered by the general exclusion applicable to the generic class. The 1991 amendment of section 80HHC thus conclusively demonstrates that the words "minerals and ores" must be construed widely and in an unrestricted manner. As has been held in Municipal Committee v. Manilal Manekji P. Ltd., AIR 1967 SC 1201 ; [1967] 2 SCR 100 and Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U. P. [1998] 7 SCC 228 ; [1998] 111 STC 425 (SC), subsequent legislation may be looked into to fix the proper interpretation to be put on the statutory provisions as it stood earlier. The benefit of section 80HHC has been extended by the amendment to a specific kind of mineral and was introduced for the first time in 1991. If we were to hold that the word "minerals" in sub-section (2)(b) never included processed minerals then the 1991 amendment excepting processed minerals from the exclusionary effect of the sub-section would be rendered meaningless and an exercise in futility."

13. Drawing support from the decisions referred supra, we are of the considered view, that the amendment brought by the Finance (No. 2) Act of 1991 to Section 80HHC of the Income Tax Act is only prospective and effective from April 1, 1991, and for the assessment years 1987-88 and 1988-89 under consideration, the statutory provision is very clear in the sense that section 80HHC is not applicable to the export of granite. Accordingly, we hold that the Tribunal was not right in law in holding that the assessee engaged in export of granite is eligible for deduction under Section 80HHC for the assessment years 1987-88 and 1988-89.

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These references are answered in favour of the Revenue and against the assessee.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   Rajaji Bhavan, Besant Nagar,
   Chennai (5 copies with records)

2. The Secretary, Central Board of Direct Taxes,
   New Delhi (3 copies)

3. The Income Tax Appellant Tribunal,
   Madras Bench A, Madras.

4. The Commissioner of Income-tax (Appeals)-VI
   Madras

5. The Commissioner of Income-tax,
   Madras.

6. The Income Tax Officer, City Ward VII(3), Madras.

+ 1 cc to Mrs. Pushya Sitaraman, Senior Standing Counsel for Income Tax Dept., SR No.8100

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SR/25.4.2006

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